

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF SHORELINE  
SUBSTANTIAL DEVELOPMENT AND  
CONDITIONAL USE PERMITS ISSUED  
BY THE CITY OF BOTHELL TO THE  
KOLL COMPANY,

SAVE A VALUABLE ENVIRONMENT  
("SAVE"), a Washington non-  
profit corporation,

Appellant,

v.

CITY OF BOTHELL, THE KOLL  
COMPANY, MARCO VITULLI, JOE  
VITULLI, DANIEL DAVIES,  
ETHEL I. DAVIES, MASAO B.  
YAGUCHI, DOROTHY YAGUCHI,  
JOY VITULLI BELLOUR, FRANCES H.  
LINDQUIST, and WASHINGTON STATE  
DEPARTMENT OF ECOLOGY,

Respondents.

SHB Nos. 82-29, 82-36,  
82-43, and 82-53

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the request for review of shoreline substantial  
development and conditional use permits granted by the City of Bothell  
to The Koll Company, came on for hearing before the Shorelines

1 Hearings Board, Gayle Rothrock, Chairman, David Akana, Nancy R.  
2 Burnett, Rodney M. Kerslake, and Lawrence J. Faulk, Members, convened  
3 at Seattle and Lacey, Washington, on April 18 through 22, and  
4 September 7, 8, and 9, 1983. Administrative Law Judge  
5 William A. Harrison presided.

6 Appellant appeared by its attorneys Joseph E. Shickich, Jr.,  
7 Thomas W. Burt, and Alison Moss. Respondent The Koll Company and  
8 named individuals appeared by their attorneys Donald E. Marcy and  
9 John C. McCullough, Jr. Respondent the City of Bothell appeared by  
10 its attorney Larry C. Martin. Respondent Department of Ecology  
11 appeared by Wick Dufford, Assistant Attorney General. Gene Barker and  
12 Associates recorded the proceedings.

13 Witnesses were sworn and testified. Exhibits were examined. From  
14 testimony heard or read and exhibits examined, the Shorelines Hearings  
15 Board makes these

#### 16 FINDINGS OF FACT

##### 17 I

18 The Site in Question. This matter arises in Bothell upon what is  
19 known as the "Vitulli Farm." Historically, the land was farmed by the  
20 Vitulli family as a truck farm, beginning in 1934. The original farm  
21 consisted of some 160 acres. In 1968, the construction of Interstate  
22 405 consumed 20 acres of the farm's western border. The remaining 140  
23 acres constitute the site in question. The site was last farmed in  
24 1974 when increasing costs and competition with large scale farms in  
25 the southwestern United States finally made farming unprofitable. The

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1 site is transected from north to south by North Creek whose average  
2 annual flow is 40 cubic feet per second, and which discharges into the  
3 Sammamish River. The Sammamish River discharges into Lake Washington.

## 4 II

5 The Proposed Development. Respondent, The Koll Company (Koll),  
6 proposes to relocate North Creek, and proposes to fill some areas of  
7 the site. It proposes a 90-foot wide parkway which would cross the  
8 relocated North Creek at two places. It then proposes that the site  
9 be developed on 30 lots with 1,830,000 square feet of total building  
10 area. Of this, Koll proposes that the largest share, 76.5 percent, be  
11 put into light industrial use with another 19 percent for office use,  
12 and the remaining 4.5 percent for commercial/retail uses which would  
13 be aimed at serving the needs of those working within the site.

## 14 III

15 The Shoreline Permits Now Before Us and Proceedings Leading to  
16 Their Issuance. In March, 1981, Koll applied to the City of Bothell's  
17 Shorelines Hearings Board (BSHB) for a shoreline substantial  
18 development permit and a shoreline conditional use permit. The BSHB  
19 granted these on July 9, 1981. Appellant, Save A Valuable Environment  
20 (SAVE), requested review before this Board. At the time of our  
21 review, the subject permits specified compliance with "Design  
22 Guidelines" which could be altered by the Bothell City Council when  
23 acting upon Koll's then-pending applications for rezone, plat, and  
24 planned unit development approvals. We held that the shoreline  
25 permits were not final. We remanded this matter to the City of

1 Bothell for final action by Order of Summary Judgment dated July 12,  
2 1982.

3       Thereafter, on August 16, 1982, the Bothell City Council granted  
4 rezone, plat, and planned unit development approval to Koll and, in so  
5 doing, altered the Design Guidelines. The BSHB responded by holding  
6 public hearings on September 23, 28, and 30, 1982, for the purpose of  
7 receiving public comments concerning changes in the proposed  
8 development resulting from the Bothell City Council's actions.  
9 Appellant, SAVE, attended these meetings and gave comment. SAVE has  
10 not proven any defect in the public notice given by the BSHB for these  
11 public hearings. Members of the BSHB had listened to tape recordings  
12 of the BSHB hearings which preceded our remand if they did not  
13 personally attend those meetings. Thereafter, on October 14, 1982,  
14 the BSHB granted to Koll:

15       1) a shoreline substantial development permit for the  
16 proposed development adopting by reference the City  
Council's Design Guidelines adopted August 16, 1982.

17       2) a shoreline conditional use permit for vehicular  
18 and pedestrian bridges.

19 In related proceedings regarding road widening and landfill proposals  
20 on the site by Koll, the BSHB had issued these shoreline permits  
21 earlier, on June 17, 1982:

22       3) a shoreline substantial development permit to  
23 widen the existing street (NE 195th) bordering the  
site.

24       4) a shoreline conditional use permit to widen the  
25 same street.

5) a shoreline conditional use permit for placement of 140,000 cubic yards of fill.

Each of the three permits immediately above (Nos. 3-5) were so drawn as to adopt whichever Design Guidelines were adopted by the first two permits above (Nos. 1 and 2). Permit No. 5, above, was revised to authorize an additional 48,000 cubic yards of fill. Koll applied for that revision on September 10, 1982; it was open for discussion at the public hearings of September 23, 28, and 30, 1982, and was granted by the BSHB on October 14, 1982. Appellant, SAVE, has requested this Board to review the above five shoreline permits for this proposed development.

## IV

Relocation of North Creek. North Creek, in the 19th Century, flowed across the site in its natural, winding course. The present location of North Creek on the site is not natural. Rather, it now flows in a relocated bed made straight as an arrow to accommodate farming. Since that relocation was made in the early part of this century, North Creek has assumed a somewhat natural appearance over time. There is no provision for public access to North Creek as it now exists.

Koll's proposal to relocate North Creek would cause it to meander. Foot trails, bridges, and accompanying parking would open the Creek and its adjacent wetlands to the public. North Creek as relocated would be both more pleasing to the eye and a better imitation of nature's work than now exists.

The relocation of North Creek would probably result in the same or lower water temperature because of proposed shading by vegetation. The floodway and floodplain of the proposal are designed to accommodate any effect this shade vegetation may have upon the movement of flood waters. Proposed riffles in the relocated North Creek will counteract the effects of a wider channel and lower gradient to retain levels of dissolved oxygen at present levels. Siltation should not be substantially greater than at present. The new channel will include a gravel substrate and pools which should be better for fish rearing than the present channel.

## V

Storm Water Runoff. Koll proposes a system of storm sewers designed to receive all storm waters from impervious surfaces on the site. Thus, no storm water runoff should enter North Creek. Storm water would pass through catch basins, an oil separator, and into a retention pond. The pond would allow the reduction of the sediment load. Thereafter, the storm water would pass through an existing vegetated ditch, which also would filter impurities, before discharging into the Sammamish River. Any water which should happen to overflow the rechanneled banks of North Creek would not re-enter North Creek, but would either percolate into the soil or enter the storm sewer system. The impact of storm water discharge from the site on water quality of the Sammamish River may or may not be significantly adverse. The impact would vary with the uses and structures ultimately placed upon the site.

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VI

Air Pollution. The impact of air polluting emissions from the site may or may not be significantly adverse. The impact would vary with the uses and structures ultimately placed upon the site.

VII

Fill of Wetlands. Estimates of wetland on the 140-acre site vary between 8 and 11-1/2 acres. The existing wetland is in transition toward dry land species and is thus decreasing. Koll proposes to fill the existing wetland, but also proposes to create 8.3 acres of new wetland in conjunction with the relocation of North Creek. The value to fish and wildlife from this new wetland should equal or exceed that of the existing wetland area.

VIII

Sewage Disposal. Koll proposes a sanitary sewer system to serve the site. This consists of 8-inch to 12-inch sewer line on the site according to the site diagram submitted with Koll's shoreline substantial development permit application. Another sheet (No. 6 of 11) of that site diagram shows a 15-inch sewer line to connect the site with an existing Metro sewer line at 185th Street south of the site. That diagram, labeled "Off Site Utility Improvements" describes the 15-inch sewer line as "proposed" and indicates that it would be within 200 feet of North Creek. The shoreline substantial development permit and other shoreline permits now before us for the instant site do not authorize the 15-inch connector line located on property outside the instant site.

IX

Stream Buffer. The shoreline permits before us contemplate that all development will be set back 50 feet from the ordinary high water mark of the relocated North Creek. The Hydraulics Permit subsequently issued by the Washington State Departments of Fisheries and Game, and apparently accepted by Koll, contains the following more stringent provisions which are necessary for the full protection of fish and game species on the site:

1. The stream buffer shall average 100 feet on each lot, and shall be planted and maintained in a native vegetation.
2. Maintenance of the stream channel and adjacent wetlands shall be consistent with providing the highest quality habitat for fish and wildlife. One annual mowing of wetland vegetation shall be allowed. Mowing shall not occur during the breeding season.

X

Design Guidelines. Koll's site plan submitted with its applications for the permits under review did not show the dimensions and locations of proposed buildings. In lieu of this, Koll submitted Design Guidelines stating verbally certain minimum setbacks from lot lines, lot coverage, and maximum height limitations. From these, Koll contends that a "building envelope" can be derived for each lot.

Koll's applications for the shoreline permits under review did not state the specific proposed use of the property or buildings on it. In lieu of this Koll proposed generic uses such as "light industrial," "office," or "commercial/retail," and also listed specific prohibited



1 uses in its Design Guidelines.

2 The parties have stipulated that the shoreline permits before us  
3 are intended to cover the construction of all structures on the site  
4 by Koll or others. Pre-Hearing Order, paragraph 8, page 5. Thus, all  
5 buildings destined to be placed on the site, if consistent with the  
6 Design Guidelines, are intended to be authorized by the present  
7 shoreline permits, and no future shoreline permits are thought to be  
8 required.

9 XI

10 Review Process. Under the shoreline permits before us, public  
11 review of each specific building on the shoreline of the site would be  
12 removed from the procedure of the state Shoreline Management Act,  
13 Chapter 90.58 RCW. Instead, these shoreline permits adopt an ad hoc  
14 procedure prescribed by the Design Guidelines and then engraft this  
15 procedure onto the procedure for determining zoning compliance set out  
16 in Bothell City ordinances. For shoreline lots, then, this procedure  
17 must be followed:

- 18 1. Submission of building plans to a private Design  
19 Review Committee.
- 20 2. Application to the Bothell Planning and zoning  
21 administrator for a "Certificate of Zoning  
22 Compliance."
- 23 3. Bothell Shoreline Administrator reviews building  
24 plans for conformance with shoreline permits now  
25 before us.
- 26 4. State Department of Ecology reviews building  
27 plans for compliance with shoreline permits and makes  
advisory recommendation to Bothell Shoreline  
Administrator.
5. Bothell Shoreline Administrator issues a decision.
6. If building plans are not in compliance with  
shoreline permits, a new application for shoreline

1 permit must be filed.

2 7. If building plans are in compliance with  
3 shoreline permits, the Bothell Shoreline  
4 Administrator notifies members of the public who know  
5 of these proceedings, and who have a request for such  
6 notice on file.

7 8. The Bothell Shoreline Administrator's decision is  
8 appealable to the Bothell Shorelines Hearings Board.

9 9. Respondents in this matter assert that the  
10 decision of the Bothell Shorelines Hearings Board,  
11 under this procedure may be reviewable by this Board.

12 10. Respondents further assert that if the decision  
13 of the Bothell Shorelines Hearings Board is not  
14 reviewable by this Board under this procedure, it may  
15 be reviewable by the Superior Court.

16 11. While appeals to this Board or Superior Court or  
17 both are pending, the decision of the Bothell  
18 Shorelines Hearings Board is reviewed by the Bothell  
19 Planning Commission.

20 In contrast to this, the public review procedure of the Shoreline  
21 Management Act 1) gives public notice and seeks public comment through  
22 newspaper publication and mailing or posting prior to local  
23 government's decision, RCW 90.58.140(4), and 2) bestows upon the  
24 public, the Department of Ecology and the Attorney General a right of  
25 appeal to this Board with subsequent judicial review, RCW  
26 90.58.180(1), (2) and (3).

## 27 XII

Any Conclusion of Law which should be deemed a Finding of Fact is  
hereby adopted as such.

From these Findings the Board comes to these

### CONCLUSIONS OF LAW

#### I

We review the proposed development for consistency with the  
applicable (Bothell) shoreline master program and the provisions of

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1 the Shoreline Management Act, RCW 90.58.140.

2 II

3 In conducting our review, we are mindful of the following:

4 Under the Shoreline Management Act of 1971, the  
5 scope and extent of authorized uses is defined only  
6 by the contents of the development permit itself.  
7 Effective operation of the permit review process, as  
8 well as enforcement of the act, see RCW  
9 90.58.210-.230, demands that shoreline permits be  
10 complete in themselves and contain sufficient detail  
11 to enable the local government and the Board to  
12 determine consistency with the policy of preferred  
13 water-dependent uses and other policies set forth in  
14 RCW 90.58.020 and the implementing regulations.  
15 Hayes v. Yount, 87 Wn2d 280, 295, 552 P.2d 1038, 1047  
16 (1976).

11 III

12 If a shoreline permit simply authorizes a development in general  
13 terms, the scope of the permit is of necessity limited by the  
14 application. Tarabocia v. Town of Gig Harbor, SHB No. 77-7 (1977).  
15 That is the case with these shoreline permits which essentially  
16 incorporate the site diagram and Design Guidelines filed with and as  
17 part of the application.

18 IV

19 Appellant challenges the shoreline permits in question on grounds  
20 that the site diagram and Design Guidelines are inconsistent with  
21 regulations governing shoreline applications. There are two  
22 regulations governing shoreline applications: 1) WAC 173-14-110 of  
23 the Department of Ecology, and 2) the Bothell Shoreline Master Program  
24 (BSMP) Chapter VIII, Section (E)(2), p.84. The latter, BSMP  
25 regulation is a local rule which must be consistent with the former,

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1 state rule. RCW 90.58.140(3). Each rule applies, severally, to  
2 proposed developments. WAC 173-14-100. By its own terms, WAC  
3 173-14-110 sets forth the minimum contents of a shoreline application.

4  
5 V

6 The statewide rule, WAC 173-14-110 provides, in pertinent part:

7 Applications for a substantial development,  
8 conditional use or variance permit shall contain, as  
9 a minimum, the information called for in the  
10 following form...

11 PROJECT DIAGRAMS. Draw all site plans to scale,  
12 clearly indicating scale on lower right-hand corner  
13 and attach them to the application.

14 SITE PLAN. Include on plan:  
15 (7) Show dimensions and locations of proposed  
16 structures.  
17 (Emphasis added.)

18 The rule is clear and unambiguous. The terms underscored above are  
19 not specially defined within chapter 173-14 WAC. We give such words  
20 their usual and ordinary meaning. Stastny v. Board of Trustees, 32  
21 Wn. App. 239, 253, 647 P.2d 496 (1982); Gaylord v. Tacoma School  
22 District 10, 88 Wn. 2d 286, 291, 559 P.2d 1340 (1977). We will not  
23 read into a regulation matters which are not there nor modify it by  
24 construction. See Garrison v. State Nursing Board, 87 Wn.2d 195, 550  
25 P.2d 7 (1976); New York Life Ins. Co. v. Jones, 86 W2d 44, 47, 541  
26 P.2d 989 (1975); Department of Revenue v. Hoppe, 82 Wn2d 545, 512 P.2d  
27 1094 (1973); Publishers Forest Products Co. v. State, 81 Wn.2d 814,  
816, 505 P.2d 453 (1973) and King County v. Seattle, 70 Wn.2d 988,  
991, 425 P.2d 387 (1967).

What is required by WAC 173-14-110 is a scale drawing showing

1 dimensions and locations of structures. Structure is defined by  
2 Webster's Third New International Dictionary (unabridged) to mean: 1)  
3 "the action of building," 2) "something constructed or built." The  
4 meaning of the statewide rule is therefore that a drawing must be  
5 submitted showing dimensions and locations of what is actually  
6 proposed to be built. Koll's site diagram showing the dimensions and  
7 locations of roads, bridges, trails and other substantial development  
8 is consistent with WAC 173-14-110. Koll's Design Guidelines, a verbal  
9 composition from which only building envelopes may be derived, is  
10 inconsistent with WAC 173-14-110.

## 11 VI

12 The language of the local rule concerning applications, BSMP  
13 Chapter VIII, Section (E)(2), p.84, requires detailed "drawings or  
14 text" explaining the intended project.<sup>1</sup> This is not inconsistent  
15

---

16 1. BSMP Chapter VIII, Section (E)(2), p. 84, provides, in pertinent  
17 part:

18 2. Required Information for Application

Each application for permit shall contain:

19 f. Detailed drawings or text sufficient to fully explain the  
intended project which information must include:

- 20 (1) Indication of size and placement of all structures  
including bulkheads.
- 21 (2) Indication of size, grade, profile of all roads or other  
vehicular passageways.
- 22 (3) Indication of any and all water supplies, sewage  
disposal facilities and solid waste handling facilities.
- 23 (4) Relation of all physical development to the associated  
shoreline or wetlands.
- 24 (5) Scale drawings of all bridges or other structures to be  
built in, on or over streams, marshes, swamps or lakes.  
25 (Emphasis added.)

1 with WAC 173-14-110 as text could enhance an application which meets  
2 the minimum site diagram requirements of WAC 173-14-110. However, the  
3 local rule cannot authorize less than the minimum required by the  
4 statewide WAC 173-14-110, and does not do so here. RCW 90.58.140(3)  
5 and WAC 173-14-100.

## 6 VII

7 That portion of Koll's application consisting of the Design  
8 Guidelines inadequately describes the proposed structures not shown on  
9 the site diagram, and leaves the instant permits without sufficient  
10 detail to allow us to determine the consistency of these structures  
11 with the policies set forth in the Shoreline Management Act and  
12 implementing regulations. See Hayes, supra at Conclusion of Law II.  
13 This lack of detail is exacerbated by Koll's failure to state specific  
14 uses of buildings to be placed on the site.

15 The policies set forth in the Shoreline Management Act at RCW  
16 90.58.020 are based upon the legislative finding that "the shorelines  
17 of the state are among the most valuable and fragile of its natural  
18 resources...." Consequently, these policies address not only the  
19 traditional concern about compatibility of uses but also "contemplate  
20 protecting against adverse effects to the public health, the land and  
21 its vegetation and wildlife, and the waters of the state and their  
22 aquatic life." Department of Ecology v. Island County and Nichols  
23 Brothers Boat Builders, Inc., SHB No. 216 (1976). The Shoreline  
24 Management Act is to be liberally construed. RCW 90.58.900. Because  
25 of the insufficient detail in the instant permits concerning

1 structures not shown on the site diagram, we cannot evaluate  
2 environmental impacts from these structures (see, e.g. Finding of Fact  
3 V regarding the effect of storm water discharge on water quality and  
4 Finding of Fact VI regarding the impact of air pollution emissions).

5 The portion of the shoreline permits purporting to authorize  
6 structures not shown on the site diagram (Exhibit R-27) must be  
7 vacated. Hayes, supra, at 296. Such structures, if shoreline  
8 substantial developments, will require shoreline permit applications  
9 of their own. The portion of the shoreline permits authorizing the  
10 substantial development shown on the site diagram (Exhibit R-27)  
11 contains sufficient detail to determine consistency with the Shoreline  
12 Management Act and implementing regulations.

#### 13 VIII

14 The BSMP at Chapter V, (B)(4), p.44 favors a planned unit  
15 development on this site. In approving this proposal as a planned  
16 unit development, the Bothell City Council adopted Resolution 610 and  
17 Ordinance 1055 by which the Design Guidelines are part of the  
18 Covenant's Conditions and Restrictions governing further development  
19 of the property. The Design Guidelines will therefore govern future  
20 structures, including those requiring their own shoreline permit  
21 applications. This will assure harmonious development as contemplated  
22 by the BSMP at p.44.

#### 23 IX

24 The site is designated as an "urban" environment by the BSMP at  
25 Chapter V, (B)(4), p.44. Appellant argues that the proposed

1 development as shown on the site diagram, Exhibit R-27, (hereafter  
2 "proposed development") is not consistent with the BSMP provision for  
3 commercial development in an urban environment. Aside from bridges  
4 and landfill which are conditional uses, the proposed development is  
5 permitted outright in the urban environment. BSMP Chapter VI, (F)(1),  
6 p.51. This is so although the proposed development may not be  
7 water-related provided that policies and regulations of the BSMP are  
8 met. Id. Appellant contends that the policy of BSMP Chapter III,  
9 (B)(3), pp. 19-20 is not met by the proposed development. We  
10 disagree. The policy establishes five prioritized use preferences for  
11 shorelines. The first preference is for uses which protect and  
12 enhance natural areas or systems with unique geological, ecological or  
13 biological significance. We have found that the present course of  
14 North Creek is not natural (Finding of Fact IV, supra). Appellant has  
15 not proven the requisite uniqueness, and thus no use could fall within  
16 the first preference. The second preference includes shoreline  
17 recreation. The proposed public walking trail and accompanying public  
18 parking will allow public access to the entire shoreline within the  
19 site. Such shoreline recreation renders the proposed development  
20 consistent with the second preference of the BSMP policy.

21 X

22 The proposed development is consistent with Bothell's declared  
23 policy in designating the site as an urban environment, namely: that  
24 this site is within the North Creek Valley which is the only sizeable  
25 location available to expand commercial development. BSMP Chapter V,



1 (B)(4)(a), p.44. Bothell has declared that there is limited room for  
2 expansion in its present Central Business District. Id. These  
3 declarations and the urban designation have established the propriety  
4 of using the site for other than agricultural purposes.

5 XI

6 Appellant has not proven that the relocation of North Creek would  
7 significantly harm its water quality, flow or other characteristics.  
8 The relocation has not been shown to be inconsistent with the policies  
9 of the Shoreline Management Act, RCW 90.58.020.

10 XII

11 Appellant has not proven that there will be significant water  
12 pollution in the Sammamish River as a result of storm water runoff  
13 from the proposed development. This aspect of the proposed  
14 development has not been shown to be inconsistent with the policies of  
15 the Shoreline Management Act, RCW 90.58.020. Future applications for  
16 shoreline substantial developments should also be reviewed to assure  
17 that such water pollution does not result. In any such future  
18 consideration, the cumulative effect of a proposed development should  
19 be considered.

20 XIII

21 Appellant has not proven that significant air pollution will  
22 result from the proposed development. This aspect of the proposed  
23 development has not been shown to be inconsistent with the policies of  
24 the Shoreline Management Act, RCW 90.58.020. Future applications for  
25 shoreline substantial developments should also be reviewed to assure

1 that such air pollution does not result. In any such future  
2 consideration, the cumulative effect of a proposed development should  
3 be considered.

4 XIV

5 Under the BSMP, the term "dredging" means "removal of earth from  
6 the bottom of a stream...to obtain use of the bottom material for  
7 landfill." Chapter IV (Q) p.35. Dredging is a conditional use in the  
8 urban environment under consideration. BSMP Chapter VI, (R)(2),  
9 p.71. Appellant has not proven that dredging is included in the  
10 proposed development. Accordingly, Koll needs no shoreline  
11 conditional use permit for dredging in connection with the proposed  
12 development.

13 XV

14 Appellant challenges the revision of Koll's shoreline conditional  
15 use permit for fill which authorized 48,000 cubic yards of fill in  
16 addition to the 140,000 cubic yards previously authorized. A new  
17 permit, rather than a revised permit, would be required if the  
18 additional fill would cause additional significant adverse  
19 environmental impact. WAC 173-14-064(2)(e). Appellant has not proven  
20 such an impact. Therefore, no new shoreline permit is required on the  
21 basis of that challenge.

22 XVI

23 The proposed development does not include flood protection  
24 measures which result in channelization, and has not been shown to be  
25 inconsistent with BSMP Chapter IV, (R)(3), p.36.

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XVII

The BSMP, Chapter VI (F)(3)(b), p.52 provides:

Commercial development within the shoreline management area without public sewage treatment facilities is prohibited.

Koll has included in its present shoreline application a sewage line connecting the site to Metro's sewage line at 185th Street. The shoreline permits before us do not authorize this connecting sewage line. (Finding of Fact VIII, supra.) The connecting line appears to lie, as proposed, on the shoreline of North Creek south of the site but within the City of Bothell. Such a proposal appears to require a shoreline conditional use permit. BSMP, Chapter VI, (K)(2), p.64. The shoreline permits before us should be conditioned to prohibit commencement of construction under them until Koll or others obtain all final, necessary government approval for connection of the on-site sewer lines to public sewage treatment facilities. See Merkel v. Port of Brownsville, 8 Wn. App. 844, 509 P.2d 390 (1973). Likewise, no structure should be occupied until it is connected to public sewage treatment facilities.

XVIII

The 50-foot buffer of vegetation along North Creek would not fully protect fish and game species on the site. For consistency with the policy of the Shoreline Management Act, RCW 90.58.020, the 100-foot buffer and related requirements of the Hydraulics Permit (Finding of Fact IX) should also be conditions of the shoreline permits.

XIX

Following our Order of Summary Judgment dated July 12, 1982, Bothell followed correct notice and hearing procedure prior to granting, on October 14, 1982, the shoreline permits before us now. Our Order remanded for final action granting or denying Koll's application for shoreline permits. There being no final permit, the permit revision procedure of WAC 173-14-064 was inapposite. We have said that, by analogy to the revision procedure, a permit which is not within the scope and intent of the application and notice cannot meet the requirement of RCW 90.58.140 and WAC 173-14-070. Bullitt v. City of Seattle, SHB Nos. 81-29 and 82-44 (Order Granting Intervention and Dismissing Requests for Review, 1983). However, appellant has not proven that the permits before us were not within the scope and intent of the original notice and applications. Moreover, those changes to the original applications made by the Bothell City Council were the subject of notice and hearing by the BSMP prior to granting the final shoreline permits. These hearings were in compliance with BSMP Chapter VIII (E) and (K), pp. 83-85(a) and 88.

XX

We have carefully considered appellant's remaining contentions and consider them to be without merit.

XXI

In summary, we conclude that the shoreline permits before us should be granted to Koll, but with the following four conditions which are necessary to conform the proposed development with the

1 Bothell Shorelines Master Program, Department of Ecology WAC  
2 173-14-110 and the Shoreline Management Act.

3 1. This permit is limited to the substantial  
4 development shown on the approved site diagram  
(Exhibit R-27).

5 2. Construction under this permit shall not commence  
6 until The Koll Company or others obtain all final,  
7 necessary government approval for connection of the  
8 on-site sewer lines to public sewage treatment  
facilities, and no structure shall be occupied until  
it is connected to public sewage treatment facilities.

9 3. The stream buffer shall average 100 feet on each  
10 lot, and shall be planted and maintained in native  
vegetation.

11 4. Maintenance of the stream channel and adjacent  
12 wetlands shall be consistent with providing the  
13 highest quality habitat for fish and wildlife. One  
annual mowing of wetland vegetation shall be  
allowed. Mowing shall not occur during the breeding  
season.

14 XXII

15 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
16 adopted as such.

17 From these Conclusions the Board enters this  
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ORDER

The shoreline permits granted by the City of Bothell to The Koll Company are reversed to the extent necessary to conform them with the four conditions set out in Conclusion of Law XXI. The permits are affirmed in all other respects. This matter is remanded to the City of Bothell for reissuance of the shoreline permits consistent with this Order.

DONE at Lacey, Washington, this 3rd day of November, 1983.

SHORELINES HEARINGS BOARD

Gayle Bothrock  
GAYLE BOTHROCK, Chairman

See Concurring Opinion  
DAVID AKANA, Lawyer Member

Rodney M. Kerslake  
RODNEY M. KERSLAKE, Member

Nancy R. Burnett  
NANCY R. BURNETT, Member

See Dissenting Opinion  
LAWRENCE J. FAULK, Member

William A. Harrison  
WILLIAM A. HARRISON  
Administrative Law Judge

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SHB Nos. 82-29/36/43/53

1 CONCURRING OPINION :

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3 A major issue raised in this case is whether the Bothell "program"  
4 establishing the rules for the enforcement and administration of the  
5 permit system contemplated by RCW 90.58.140(3) is consistent with the  
6 Shoreline Management Act, in its terms and its application.

7 The Act requires the department to develop rules for the  
8 enforcement and administration of the permit system. RCW  
9 90.58.140(3). Local governments must establish a program consistent  
10 with such rules. Id.

11 The department has adopted WAC 173-14-110 relating to the minimum  
12 information required on an application for a shoreline permit.  
13 Relevant provisions state:

14 Applications for a substantial development, conditional  
15 use, or variance permit shall contain, as a minimum,  
16 the information called for in the following form. Such  
forms shall be supplied by local government.

17 . . . . .

18 PROJECT DIAGRAMS: Draw all site plans and maps to  
19 scale, clearly indicating scale on lower right-hand  
corner and attach them to the application.

- 20 (a) SITE PLAN. Include on plan:  
21 (1) Site boundary.  
22 (2) Property dimensions in vicinity of project.  
23 (3) Ordinary high-water mark.  
24 (4) Typical cross section or sections showing:  
(i) Existing ground elevations.  
(ii) Proposed ground elevation.  
(iii) Height of existing structures.  
(iv) Height of proposed structures.

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(6) Show dimensions and locations of existing structures which will be maintained.

(7) Show dimensions and locations of proposed structures. . . .

WAC 173-14-064, relating to permit revisions, confirms the propriety of showing structures on a site plan:

When an applicant seeks to revise a substantial development, conditional use, or variance permit, local government shall request from the applicant detailed plans and text describing the proposed changes in the permit.

(1) If local government determines that the proposed changes are within the scope and intent of the original permit, local government may approve a revision.

(2) "Within the scope and intent of the original permit" shall mean the following:

(a) No additional over water construction will be involved;

(b) Lot coverage and height may be increased a maximum of ten percent from the provisions of the original permit: Provided, That revisions involving new structures not shown on the original site plan shall require a new permit, and: Provided further, That any revisions authorized under this subsection shall not exceed height, lot coverage, setback or any other requirements of the master program for the area in which the project is located....(Emphasis supplied.)

The City of Bothell has established a program within its master program to be consistent with the foregoing provisions which states in relevant part at page 84 that:

2. REQUIRED INFORMATION FOR APPLICATION

Each application for permit shall contain:

- a. Name, address, telephone number of applicant.
- b. Name, address, telephone number of property owner.
- c. Legal description of property.
- d. Common description of property.
- e. Name of associated shoreline or wetland.



1 f. detailed drawings or text sufficient to fully  
2 explain the intended project which information must  
include:

3 (1) Indication of size and placement of all  
structures including bulkheads.

4 . . . . .

5 (5) Scale drawings of all gridges (sic) or  
6 other structures to be built in, on or over  
streams, marshed (sic), swamps or lakes.  
7 (Emphasis supplied.)

8 The Bothell program differs from the department's rule as the emphasis  
9 shows. The Bothell rule is not inconsistent with the state rule,  
10 however. The words "and" and "or" have been frequently interchanged  
11 by the courts in a manner to avoid strained or absurd consequences.  
12 State v. Keller, 98 Wn.2d 725, 729 (1983); State v. Jones, 32 Wn.App.  
13 359 (1982). In the light of the interchangeability of the words, and  
14 the state regulations that set forth the minimum information required,  
15 there is no apparent difference between the Bothell and state rules.  
16 In any event, whether drawings or text, or drawings and text, should  
17 be required are not as important as whether the shoreline permits in  
18 question are "complete in themselves and contain sufficient detail to  
19 enable the local government and the Board to determine consistency  
20 with the...policies set forth in RCW 90.53.020 and the implementing  
21 regulations." Bayes v. Yount, 87 Wn.2d 280, 296 (1976). Thus, a  
22 permit should be fully comprehensible to disclose those matters  
23 reviewed by the Board. Id. at 295. Such matters go beyond "use" and  
24 are also concerned with potentially adverse effects upon public

1 health,<sup>1</sup> vegetation,<sup>2</sup> wildlife,<sup>3</sup> aesthetics,<sup>4</sup> waters and their  
2 aquatic life,<sup>5</sup> etc. Department of Ecology v. Island County and  
3 Nichols Brothers Boat Builders, Inc., SHB No. 216 (1976). The Board  
4 reviews substantial developments which include the "construction or  
5 exterior alteration of structures." RCW 90.58.030(3)(d, e). A permit  
6 which does not describe proposed structures in a manner which  
7 adequately communicates sufficient information and detail upon which  
8 this Board can comfortably review it, cannot pass muster. Similarly,  
9 the instant permit likewise cannot authorize structures where none is  
10 sufficiently disclosed. Although one may have an impression of what  
11 the structures might look like, or where they might be located, the  
12 replication of such impressions amongst the applicant, government  
13 agencies, and citizens would be different. Such differing impressions  
14 should not linger after a permit for construction has been issued.

15 Effective operation of the permit review process, as  
16 well as enforcement of the act, see RCW 90.58.210-.230,  
17 demands that shoreline permits be complete in  
18 themselves and contain sufficient detail to enable the  
19 local government and the board to determine consistency  
20 with the policy of preferred water-dependent uses and  
21 other policies set forth in RCW 90.58.020 and the  
22 implementing regulations.

23 Hayes v. Yount, supra at 295, 296. At most, Koll has proposed a

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- 24 1. E.g., SHB Nos. 8 and 230.  
25 2. E.g., SHB Nos. 231 and 232.  
26 3. E.g., SHB No. 244.  
27 4. E.g., SHB Nos. 115 and 81-41.  
5. E.g., SHB Nos. 108, 155, and 185.

CONCURRING OPINION - DAVID AKANA  
SHB Nos. 82-29, 82-36, 82-43 & 82-53

1 subdivision of land with certain described roads, utilities, covenants  
2 and design constraints. The level of detail used to describe the  
3 proposed structures does not substantially comply with the state or  
4 Bothell rules.

5 In conclusion, the instant permits do not authorize the  
6 construction of buildings and other structures alluded to in the  
7 "Design Guidelines." I concur with the findings, reasoning, and  
8 conclusions of the majority on this issue and on the other issues  
9 decided.

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12 *David Akana*

13 DAVID AKANA, Lawyer Member  
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1 DISSENTING OPINION

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3 The central issue to be decided by this Board is whether the  
4 design guidelines conform to the Shoreline Management Act (SMA) and  
5 the Bothell Shoreline Master Program (BSMP).

6 The call for specific plans for each building is in DOE's general  
7 rules of guidance for permit programs, Chapter 173-14 WAC. (WAC  
8 173-14-110(11)(9)(7)). However, the BSMP is also adopted as part of  
9 the Washington Administrative Code, WAC 173-19-2505. Bothell's plan  
10 allows detailed drawings or Texts sufficient to explain the intended  
11 project. (BSMP, VIII (E)(2).) This has been interpreted by both the  
12 city and DOE to allow the "Design Guideline" approach.

13 The BSMP was approved by DOE after evaluation of the local permit  
14 program. The program's approval represents a decision by DOE that it  
15 conforms to the general regulation for permit programs, Chapter 173-14  
16 WAC. In effect, DOE concluded that there is no conflict between  
17 Bothell's program and the State regulations.

18 I reach the same conclusion. The majority should look to BSMP  
19 VIII(E)(2) in determining whether a project described in terms of  
20 "Design Guidelines" is sufficiently detailed to meet the applicable  
21 requirements. In doing so, I believe the Board should give great  
22 weight to the construction uniformly given to the "Drawings or Text"  
23 language by the two agencies (Bothell and DOE) which have adopted it.

24 There is suprisingly no precedent precisely covering the "Design  
25 Guidelines" or umbrella permit approach presented by this case. The  
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1 SMA does not explicitly cover it. The concept is innovative. It  
2 seems to be a good idea and one that will allow this piece of property  
3 to be developed in a way that enhances the public's access to an  
4 improved North Creek.

5 The Shoreline Management Act (SMA) stresses the need  
6 that....Future development be carefully planned, managed and  
7 coordinated in keeping with the public interest. I believe this  
8 project fits that description. The testimony was clear that in order  
9 to justify a major investment, up front, to enhance the creek and make  
10 the other improvements that will benefit the community, the developer  
11 felt they needed to know what it is they were going to be allowed to  
12 do. (P.4.68, 79, 70) The design guidelines enable that result to be  
13 achieved.

14 The fact is that for certain kinds of complex projects, the  
15 developers cannot pre-determine the exact final configuration of  
16 structures and uses, if they are to be able to respond intelligently  
17 to market forces.

18 The majority opinion quotes the Supreme Court case; Hayes v Yount  
19 87 Wn2d (1976) to justify their position. In that case there were  
20 three words that described the project, namely "marine industrial  
21 area." The Supreme court said "the description "marine industrial  
22 area" is not sufficiently specific to allow the county or the Board to  
23 carry out the statutory obligation imposed by RCW 90.589.1a40(2)(a)"

24 In my view Hayes v Yount does not stand for the proposition that  
25 design guidelines may not be used; it does indicate that a three-word

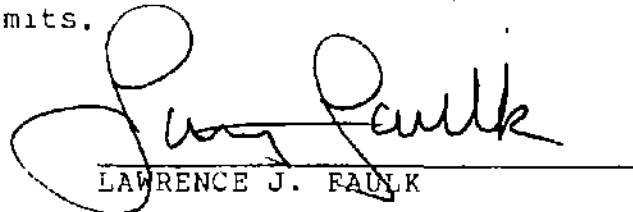
26 DISSENTING OPINION

27 SHB NOS. 82-29, 82-36  
82-43 & 82-53

1 description of the project, without more is insufficiently specific.  
2 In this case, the description of the project contained in the design  
3 guidelines, which are a part of the application, runs to some 40,000  
4 words.

5 There is no reason why such projects should not be able to locate  
6 on shorelines if a means can be provided to insure that the policies  
7 and purposes of the SMA will not be violated.

8 I believe that the permits and process developed in this case  
9 offer that protection. I conclude that the Board should embrace this  
10 innovation and sustain the permits.

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13 LAWRENCE J. FAULK